

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Maureen Costanzo,

Plaintiff,

vs.

Deutsche Bank NA, et al.,

Defendants.

2:24-cv-01662-CDS-MDC

Order

APPLICATION TO PROCEED IN FORMA
PAUPERIS (EFC NO. 1)

Pro se plaintiff Maureen Costanzo filed an *Application To Proceed In Forma Pauperis* (“IFP”). ECF No. 1. The Court denies plaintiff’s IFP application without prejudice.

DISCUSSION

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action “without prepayment of fees or security thereof” if the plaintiff submits a financial affidavit that demonstrates the plaintiff “is unable to pay such fees or give security therefor.” The Ninth Circuit has recognized that “there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status.” *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees, but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

The applicant's affidavit must state the facts regarding the individual's poverty “with some particularity, definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed

1 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
2 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he "failed to
3 verify his poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's
4 personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.
5 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in
6 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-
7 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma
8 pauperis application).

9 The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for
10 incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-incarcerated
11 persons. The Long Form requires more detailed information than the Short Form. The court typically
12 does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears
13 that the plaintiff is concealing information about his income for determining whether the applicant
14 qualifies for IFP status. When an applicant is specifically ordered to submit the Long Form, the correct
15 form must be submitted, and the applicant must provide all the information requested in the Long Form
16 so that the court is able to make a fact finding regarding the applicant's financial status. See e.g. *Greco v.*
17 *NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov.
18 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL,
19 2016 WL 7493963 (D. Nev. Dec. 30, 2016).

21 Costanzo filed the short form IFP application. ECF No. 1. Plaintiff leaves questions one, two,
22 and multiple subparts of questions three blank. She states that she owns a home in response to question
23 five, but she states that she is behind on payments and owns no other assets. Question five states that if
24 you own assets or property, you must list its approximate value, but plaintiff does not state the value of
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1 the home she owns. ECF No. 1. The Court finds that plaintiff's IFP application is incomplete, so it
 2 cannot determine if plaintiff qualifies for IFP status. The Court will allow plaintiff another opportunity
 3 to show that she qualifies for IFP status. Plaintiff must resubmit the long form application. Plaintiff must
 4 answer all questions on the long form with detailed explanations about his income and expenses.
 5 Plaintiff cannot leave any questions blank or respond that a question is "N/A" without an explanation.

6 IT IS SO ORDERED THAT:

- 7 1. Plaintiff's *Application To Proceed In Forma Pauperis* (ECF No. 1) is DENIED without
 8 prejudice.
- 9 2. By **November 14, 2024**, plaintiff shall either (1) file the long form application to proceed in
 10 forma pauperis as specified in the Court's order or (2) plaintiff must pay the full fee for filing a
 11 civil action.
- 12 3. Failure to timely comply with this Order may result in a recommendation that this case be
 13 dismissed with prejudice.
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15 **NOTICE**

16 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
 17 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
 18 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
 19 may determine that an appeal has been waived due to the failure to file objections within the specified
 20 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
 21 objections within the specified time and (2) failure to properly address and brief the objectionable issues
 22 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
 23 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
 24 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, plaintiffs must immediately file written
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1 notification with the court of any change of address. The notification must include proof of service upon
2 each opposing party's attorney, or upon the opposing party if the party is unrepresented by counsel.

3 **Failure to comply with this rule may result in dismissal of the action.**

4 It is so ordered.

5 DATED this 15th day of October 2024.

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8 Hon. Maximiliano D. Couvillier III
9 United States Magistrate Judge
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